No. 88-1184

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

L. LEE BEARDSLY, *et al.*,

Cross-Petitioners,

v.

CHICAGO & NORTH WESTERN TRANSPORTATION COMPANY, *et al.*,

Cross-Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Did the Court of Appeals err in borrowing the six month statute of limitations established in § 10(b) of the National Labor Relations Act rather than the two year statute of limitations established in § 3 First (r) of the Railway Labor Act?

2. Did the Court of Appeals err in upholding the entry of summary judgment regarding the statute of limitation issues when factual issues were raised regarding the accrual date of the cause of action and the existence of facts would support the equitable tolling of the statute of limitations?

3. Does the existence of a fiduciary relationship between an employee and his union alter the analysis relating to the "discovery" of a cause of action that a court should use in deciding whether to equitably toll a statute of limitations?

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LIST OF PARTIES–Continued

The following entities are named as cross-respondents in this matter: Chicago and North Western Transportation Company; Brotherhood of Locomotive Engineers; United Transportation Union, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; and the Railroad Yardmasters of America.

The following individuals took part in the lower court proceedings, but do not appear as cross-petitioners:

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Donald E. Bisgaard
La Don E. Crane
Sam H. Dean
A. M. McQuade
Frank M. Ramey
Arnold M. Scheel
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L. LEE BEARDSLY, *et al.*,

Cross-Petitioners,

v.

CHICAGO & NORTH WESTERN TRANSPORTAION COMPANY, *et al.*,

Cross-Respondents.

CROSS-PETITION FOR A WRIT OF CERTIORAI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Cross-Petitioners, former employees of the Chicago, Rock Island & Pacific Railroad Company ("Rock Island"), respectfully request that if a writ of certiorari issues to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, that the Court also issue a writ of certiorari based upon the issues raised in this cross-petition.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eighth Circuit is reported at 850 F.2d 1255 (Pet. App. 1a-44a).[1] That opinion was issued upon a request for rehearing and superseded the court's earlier opinion which was reported at 836 F.2d 1493. The opinions, rulings, orders, and judgment of the United States District Court for the Southern District of Iowa which form the basis for the Court of Appeals' opinion are all unreported (Pet. App. 45a-73a).

JURISDICTION

The decision of the court of appeals upon rehearing was issued on June 15, 1988. Cross-Respondents filed petitions for rehearing and suggestion for hearing en banc. Those petitions were denied on September 14, 1988. Cross-Respondent Chicago & North Western Transportation Company filed its petition for a writ of certiorari on December 13, 1988. The jurisdiction of this Court to review the judgment of the Eighth Circuit is invoked under 28 U.S.C. § 1254(1).

Cross-Petitioners are filing this cross-petition pursuant to Supreme Court Rule 19.5. As required by Rule 21.1(e)(iii), cross-petitioners state that they received the petition filed in No. 88-994 on December 17, 1988. Since this cross-petition is being filed pursuant to Rule 19.5,

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[1] All of the relevant opinions, rulings, orders, and judgments of the lower courts are contained in the appendix to the Petition filed in *Chicago & North Western Transportation Company v. L. Lee Beardsly, et al.*, No. 88-994. Citations to that appendix shall be designated "Pet. App.".

Supreme Court Rule 20.5 states that this cross-petition cannot be granted unless the Court grants the petition for writ of certiorari filed in No. 88-994.

STATUTES INVOLVED

Section 3 First (a) and (i) of the Railway Labor Act, 45 U.S.C. § 153 First (a), (i); § 105 of the Rock Island Transition and Employee Assistance Act, 45 U.S.C. § 1004; and § 704(g) of the Regional Rail Reorganization Act, 45 U.S.C. § 797c(g); and § 10(b) of the National Labor Relations Act, 29 U.S.C. § 160(b) are set forth at Pet. App. 80a-84a. Section 3 First (r) of the Railway Labor Act, 45 U.S.C. § 153 First (r) is set forth at Cross-Petition Appendix 1a.

STATEMENT OF THE CASE

Much of the background and underlying facts of this case are set forth in the Petition for Writ of Certiorari and Respondents' Brief in Opposition filed in *Chicago & North Western Transportation Company v. Beardsly*, No. 88-994. The additional facts which the Court will need to decide this cross-petition are set forth below.

1. The Eighth Circuit held that damage claims against the cross-respondents were barred because they were brought more than six months following the accrual of the causes of action (Pet. App. 24a-25a). The court relied upon reasoning similar to that contained in *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983). Cross-Petitioners had argued that the two

year statute contained in Section 3 First (r) of the Railroad Labor Act, 45 U.S.C. § 153 First (r), should be used in this case. In making that argument, cross-petitioners noted that Congress had struck a different balance in railroad labor cases than in other cases regarding the time limit for challenging an action involving labor relations which justified the use of a two year limitation period rather than a six month period.

2. Cross-Petitioners also argued that the limitation period should have begun to run within a reasonable time after June 20, 1983, rather than at the earlier date used by the district court. They argued that the factual record made it inappropriate to resolve the matter against them at the summary judgment stage of the district court proceedings, because evidence supporting their claim had been submitted into the record. Cross-Petitioners also argued that, in any event, the statute of limitations should have been tolled because the cross-respondents had fraudulently concealed certain facts from them. The Eighth Circuit rejected both of those arguments without comment.

REASONS FOR GRANTING THE WRIT

I. This Court should resolve an important issue regarding the statute of limitations for actions brought under the Railway Labor Act, since the court below and the other courts of appeals have improperly established a six month limitation period.

The Eighth Circuit determined that it should follow the reasoning of *DelCostello* and determine that a six month statute of limitation period should apply for

unfair representation claims brought under the Railway Labor Act. A similar conclusion has been reached by a number of other circuit courts.[2] Courts have rejected the argument that the two year period specified in Section 3 First (r) of the Railway Labor Act, 45 U.S.C. § 153 First (r), does not apply to cases such as this one. The various court's conclusions are purportedly based on the *DelCostello* analysis that there is a congressional attempt to have "relatively rapid final resolution of labor disputes" in all fields regulated by federal labor law. *DelCostello*, 462 U.S. at 168.

In analyzing whether the courts of appeals' analyses are correct, "[i]t should be emphasized from the outset, . . . that the National Labor Relations Act cannot be imported wholesale into the railway labor area. Even rough analogies must be drawn circumspectly, with due regard for the many differences between the statutory schemes." *Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369, 383 (1969) (footnote omitted).

Section 3 First (r) relates to the time that an aggrieved party has to challenge the arbitration decision in a dispute governed by Section 3 First. Congress established a two year period for such an appeal. Thus, Congress balanced the needs for finality of a labor dispute and quick resolution of a labor dispute differently in the context of the Railway Labor Act than it has in other labor statutes. *Compare* 45 U.S.C. § 153 First (r) (two years) *with* 29 U.S.C. § 160(b) (six months).

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[2] The cases which have reached similar conclusions are listed in the petition in No. 88-994 at pages 8-9 n.12.

Although courts which have analyzed this question have stated that the two year period specified in the Railroad Labor Act evidences different concerns than the six month period specified in the National Labor Relations Act, those courts have not paid sufficient deference to the intent of Congress.[3] In enacting the Railroad Labor Act, Congress meant to deal with certain specific concerns raised by the nature of labor-management disputes between railroads and railroad unions. At the time of its passage, many of the disputes that had arisen were quite contentious. *See, e.g., Slocum v. Delaware, Lackawanna & Western Railroad Co.*, 339 U.S. 239, 242 (1950) (the "plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes"). Congress, however, determined that a two year period was more appropriate than a shorter or a longer period to allow an arbitration decision to be challenged.

The ability of a party to challenge an arbitration two years after it was decided, and certainly much longer than two years after the underlying dispute arose, in a potentially contentious atmosphere, indicates that Congress believed that a two year period was not too long. Indeed, because of many of the tensions that existed (and still exist) in railroad labor matters, a longer period can

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[3] The issue of whether a six month statute of limitations should apply to Railway Labor Act cases has not been decided by this Court. Although *West v. Conrail*, 481 U.S. ___, 95 L.Ed.2d 32 (1987) dealt with certain statute of limitations issues under the Railway Labor Act, it did not decide whether the six month *DelCostello* period should be applied to railroad cases.

be seen to help the parties to cool off and try to resolve their differences through discussion, rather than forcing parties to bring disputes to court within a six month period. Thus, the two year time limit specified in Section 3 First (r) was a rational and thoughtful decision by Congress not to rush railway cases into court.

The lower courts have failed to follow that congressional intent. Instead, they are forcing disputes to be resolved during a shorter time period than that specified in the Railway Labor Act. Because the lower courts have improperly grafted a six month limitation onto the Railway Labor Act, this Court should grant the cross-petition to resolve this matter, and insure that the statute is interpreted according to the intent of Congress.

In addition, this Court has recently decided a similar case involving the borrowing of a statute of limitations in a lawsuit based on a federal labor statute. In *Reed v. United Transportation Union*, No. 87-1031 (U.S. January 11, 1989), this Court held that the Fourth Circuit had improperly borrowed the six month limitation period of *DelCostello* rather than a three year state limitation period in a case involving a claim under a federal labor statute. The Court's decision clarifies how courts are to examine which limitation period best advances the federal policies of the statute at issue when whether to borrow a state limitations period or the six month period of § 10(b) of the Labor Management Relations Act. If the Court grants this cross-petition, it can further clarify how courts are to examine the federal policies implicated when they are faced with the choice of which of two *federal* limitations should be borrowed. The Court's resolution of that issue coupled with its analysis in *Reed* would help the lower courts to understand the true breadth and scope of *DelCostello* and would advance the federal policy of

clarifying what statute of limitations analysis is to be applied in various labor contexts.

II. The Eighth Circuit erred in its application of summary judgment principles to the jurisdictional issues raised in this case.

This case was decided on summary judgment motions in the district court. In opposition to those motions, cross-petitioners submitted evidence indicating that there was a factual dispute regarding which date should be used to start the running of the statute of limitations. Cross-Respondents contended that the causes of action accrued more than six months prior to the initiation of litigation. Cross-Petitioners, on the other hand, state that a reasonable time after June 20, 1983, was the correct date, since that was the day on which the sale of the assets of Rock Island to the Chicago & North Western Transportation Company ("CNW") was approved by the bankruptcy court. *See also* Pet. 3 n.3 (referring to the "final disposition" of the Rock Island assets). Prior to that time, there was great uncertainty regarding which carrier would obtain the assets and run the lines at issue.[4]

In addition, cross-petitioners argued that the statute of limitations should be tolled because the unions affirmatively mislead them regarding the union activities. *Cf. Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946) (equitable

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[4] Indeed, the bankruptcy court's decision regarding the final distribution of assets was delayed for some time because of this Court's decision in *Railway Labor Executives' Assoc. v. Gibbons*, 455 U.S. 457 (1982). The *Gibbons* decision affected this matter since it declared that certain employee protection clauses in the RITEA were unconstitutional. Thus, that decision cast doubt upon the status of all agreements based on the initial version of the RITEA.

tolling doctrine "is read into every statute of limitations"). Cross-Petitioners argued that these misrepresentations were sufficient to toll the running the statute of limitations. In support of that proposition, they submitted affidavits describing the statements that were made by the unions.

In particular, cross-petitioners alleged that the statute could be tolled because they had exercised "due diligence" in discovering the existence of their claim against the cross-respondents despite the fraudulent concealment of that claim.[5] Their affidavits indicate that the cross-respondent unions misrepresented the need to challenge the seniority provisions and hiring conditions until after the purchase of the Rock Island assets was made final. Cross-Petitioners also argued that since that cross-respondent stood in a fiduciary relationship to them, the cross-respondents' actions constituted a fraudulent misrepresentation that they could reasonably rely upon. In connection with that argument, cross-petitioners noted that state law supported the relaxation of the evidence needed to show fraudulent misrepresentation when a fiduciary relationship exists between the parties. *See, e.g., Pride v. Peterson,* 173 N.W.2d 549, 555 (Iowa 1970). The Court of Appeals dismissed this argument without comment.

The movant has the burden to demonstrate in its summary judgment motion that there is no genuine issue

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[5] The district court had held that equitable tolling of the statute of limitations was unavailable to cross-petitioners because they failed to demonstrate that they acted with "due diligence" and failed to show that there was fraudulent concealment of the claim (Pet. App. 62a-63a).

of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In addition, all inferences for materials before a court deciding a summary judgment motion are to be interpreted in the light most favorable to the non-moving party. *Matsushita Electric Indust. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). The courts below disregarded those principles by not allowing this matter to go forward for a full hearing regarding the facts connected with the tolling of the statute of limitations, the date upon which the running of the statute of limitations should begin, and the availability of equitable tolling when a fiduciary relationship exists.

The actions of the lower courts raise several important issues which this Court should resolve. First, the decisions raise an issue regarding how a lower court should resolve jurisdictional issues in a summary judgment context. The lower courts simply appear to have presumed that the earlier dates were the proper dates for the start of the running of the statute of limitations, even though cross-petitioners attempted to raise factual issues regarding whether the seniority and hiring conditions were, in fact, "final" or whether they were interim conditions which became final on June 20, 1983.

Second, because this case took place in the context of a bankruptcy proceeding, it would be important for the court to resolve when a statute of limitations begins to run when there is uncertainty regarding the sale of assets during a bankruptcy proceeding. Thus, whenever there is a temporary transfer of assets which results in an agreement between the temporary owner and a labor union, the court should decide when that agreement becomes

final for purposes of filing an action under the applicable labor statute. The lower courts appear to decide that the statute of limitations *always* runs from the signing of an agreement, even when a transfer of ownership is not complete, and indeed may be uncertain. If that is the correct law, then the courts below are correct. If, however, the statute of limitations could begin on some other date, the lower courts incorrectly granted the summary judgment motion.

In addition, this case raises issues regarding the equitable tolling of a limitation period in a labor context. While the Courts recognize the union is a fiduciary to the union members, the courts have, without comment, failed to apply the fiduciary concept within the context of the application of a rather short and strict statute of limitations. That issue is an important one which should be resolved by this Court.

CONCLUSION

For the reasons stated above, cross-petitioners request that if this Court grants the petition in No. 88-994 by issuing a writ of certiorari to the United States Court of Appeals for the Eighth Circuit, that it also grant this cross-petition and issue a further writ of certiorari.

Respectfully submitted,

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APPENDIX

ADDITIONAL STATUTE INVOLVED

Section 3 First (r) of the Railway Labor Act, 45 U.S.C. § 153 First (r), states:

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.